

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JESSIE GARCIA,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 1:21-cv-01799-SAB

ORDER DIRECTING CLERK OF COURT
TO RANDOMLY ASSIGN A DISTRICT
JUDGE TO THIS ACTION

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL

(ECF Nos. 2, 3)

OBJECTIONS DUE WITHIN FOURTEEN
DAYS

Plaintiff Jessie Garcia filed a complaint on December 21, 2021, challenging a final decision of the Commissioner of Social Security denying their application for disability benefits. Plaintiff did not pay the filing fee in this action and instead filed an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF No. 2.) On December 28, 2021, an order issued finding that Plaintiff's application to proceed *in forma pauperis* did not demonstrate entitlement to proceed in this action without prepayment of fees. (ECF No. 3.) Plaintiff was ordered to either file a long form application to proceed without prepayment of fees or pay the filing fee. (*Id.*) The deadline to either submit a long form application or pay the filing fee was January 18, 2022. (*See id.*) The deadline to submit a long form application has expired and Plaintiff has not filed an application.

1 In order to proceed in court without prepayment of the filing fee, a plaintiff must submit
2 an affidavit demonstrating that he “is unable to pay such fees or give security therefor.” 28
3 U.S.C. § 1915(a)(1). The right to proceed without prepayment of fees in a civil case is a
4 privilege and not a right. Rowland v. California Men’s Colony, Unit II Men’s Advisory Council,
5 506 U.S. 194, 198 n.2 (1993); Franklin v. Murphy, 745 F.2d 1221, 1231 (9th Cir. 1984)
6 (“permission to proceed *in forma pauperis* is itself a matter of privilege and not right; denial of
7 *in forma pauperis* status does not violate the applicant’s right to due process”). A plaintiff need
8 not be absolutely destitute to proceed *in forma pauperis* and the application is sufficient if it
9 states that due to his poverty he is unable to pay the costs and still be able to provide himself and
10 his dependents with the necessities of life. Adkins v. E.I. DuPont de Nemours & Co., 335 U.S.
11 331, 339 (1948). Whether to grant or deny an application to proceed without prepayment of fees
12 is an exercise of the district court’s discretion. Escobedo v. Applebees, 787 F.3d 1226, 1236 (9th
13 Cir. 2015).

14 Plaintiff was provided twenty-one days to either file a long form application to proceed
15 without prepayment of fees or pay the filing fee. (ECF No. 3 at 2.) Plaintiff was further advised
16 that failure to either pay the \$402.00 filing fee or file a long form application to proceed *in forma*
17 *pauperis* would result in dismissal of this action. Plaintiff’s failure to comply with the Court’s
18 order by either submitting an application to proceed *in forma pauperis* or paying the filing fee
19 warrants dismissal.

20 Accordingly, it is HEREBY ORDERED that the Clerk of Court shall randomly assign a
21 District Judge to this action.

22 Further, IT IS HEREBY RECOMMENDED that this action be dismissed for failure to
23 prosecute and failure pay the filing fee.

24 This findings and recommendations is submitted to the district judge assigned to this
25 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 304. Within **fourteen**
26 **(14) days** of service of this recommendation, Plaintiff may file written objections to this findings
27 and recommendations with the court. Such a document should be captioned “Objections to
28 Magistrate Judge’s Findings and Recommendations.” The district judge will review the

1 magistrate judge's findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The
2 parties are advised that failure to file objections within the specified time may result in the
3 waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing
4 Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

5
6 IT IS SO ORDERED.

7 Dated: February 8, 2022


UNITED STATES MAGISTRATE JUDGE